

Office of the Mayor
Robert B. Mielke



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April 3, 2017

Received & Inspected

APR 10 2017

FCC Mail Room

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APR 10 2017

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Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, DC 20554

RE: Comment Sough on Streamlining Deployment of Small Cell Infrastructure by Improving
Wireless Facilities Siting Policies: Mobilitie, LLC Petition for Declaring Ruling

WT Docket No. 16-421, Comments due April 7, 2017

DOCKET FILE COPY ORIGINAL

The City of Wausau Common Council approved the comments attached to this letter regarding the above WT Docket No. 16-421. The Wausau Common Council submits these comments along with the Resolution of the Capital Improvements and Street Maintenance Committee of the City of Wausau, Wisconsin.

If you have any further questions, feel free to call or mail at Robert.Mielke@ci.wausau.wi.us

Thank you,

Robert B. Mielke
Mayor, City of Wausau

Cc: Eric Lindman - Public Works & Utilities Director, City of Wausau
Anne Jacobson, City of Wausau Attorney
City Common Council Members (11)
Toni Rayala - City of Wausau Clerk
Mary Goede - City of Wausau Deputy Clerk
Gerry Klein - City/County IT Director

Enc.: Resolution of CISM 16-0411
City of Wausau General Comments (4 pages)

No. of Copies rec'd 0+1
List ABCDE

RESOLUTION OF THE CAPITAL IMPROVEMENTS AND STREET MAINTENANCE COMMITTEE

Approving comments to the Federal Communications Commission regarding Mobilitie, LLC Petition for Declaratory Ruling for small cell sites within city right-of-way

Committee Action: Approved 4-0

Fiscal Impact: None

File Number: 16-0411

Date Introduced: March 28, 2017

FISCAL IMPACT SUMMARY

COSTS	Budget Neutral	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	
	Included in Budget:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Budget Source:
	One-time Costs:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Amount:
	Recurring Costs:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Amount:
SOURCE	Fee Financed:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Amount:
	Grant Financed:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Amount:
	Debt Financed:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Amount Annual Retirement
	TID Financed:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Amount:
	TID Source: Increment Revenue <input type="checkbox"/> Debt <input type="checkbox"/> Funds on Hand <input type="checkbox"/> Interfund Loan <input type="checkbox"/>			

RESOLUTION

WHEREAS, wireless companies are actively expanding the network capacity needed to maintain and improve the quality of existing services and to support the introduction of new technologies and services; and

WHEREAS, many wireless providers are deploying small cells and distributed antenna systems to meet localized needs for coverage and increased capacity in outdoor and indoor environments; and

WHEREAS, the facilities used in these networks are smaller and less obtrusive than traditional cell towers and antennas, they must be deployed in many more locations to function effectively; and

WHEREAS, as a result, local land-use authorities in many areas are facing substantial increases in the volume of siting applications for deployment of these facilities; and

WHEREAS, on February 24, 2016, Mobilitie, LLC submitted two applications to the City to install 120 ft. towers within City right-of-way for future wireless/radio communication and on March 14, 2016, the City received two additional applications dated February 24, 2016 for the installation of two additional towers in City right-of-way; and

WHEREAS, your Capital Improvements and Street Maintenance Committee, on April 14, 2016, recommended denial of the applications; and

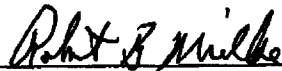
WHEREAS, your Common Council, on April 18, 2016, failed to pass a resolution approving the applications; and

WHEREAS, the Federal Communications Commission (FCC) is seeking comments from municipalities regarding Mobilitie, LLC Petition for Declaratory Ruling regarding streamlining deployment of small cell infrastructure by improving wireless facilities siting policies; and

WHEREAS, your Capital Improvements and Street Maintenance Committee, at their March 9, 2017 meeting, discussed and approved forwarding comments to the FCC;

NOW THEREFORE, BE IT RESOLVED, that the City of Wausau expresses its support for the attached comments and directs that a copy of this Resolution and attached Comments be forwarded to the Federal Communications Commission.

Approved:



Robert B. Mielke, Mayor

Responses are based on the FCC Public Notice DA 16-1427 titled:

"Comment on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies"

Federal Communications Commission

WT Docket No. 16-421, Comments due April 07, 2017

City of Wausau - General Comments

The City of Wausau has been very cautious and skeptical of the ruling by the PSC as well as the interpretation by Mobilitie that they have a basic unrestricted right to utilize a municipalities Rights-of-Way. The City of Wausau has been working with Mobilitie to establish a license agreement which will outline the process and requirements Mobilitie and other similar entities will need to follow when applying for Rights-of-Way access. Mobilitie has been putting a lot of pressure on municipalities to rush these agreements through and get them approved. The City of Wausau is working with Mobilitie but we, as a municipality, need to make sure this agreement is in the best interest of the City and its residents.

Mobilitie is a private "for profit" company who wants to utilize Rights-of-Way to reduce their upfront capital costs in establishing a nationwide network. This network will be leased for the highest possible rent to a mobile carrier. Mobilitie, through additional regulation, is attempting to prevent or minimize a municipality's ability to regulate its own Rights-of-Way. The use of Rights-of-Way should be used for direct benefit to citizens as it is a valuable asset owned by the tax payers. These types of proposed uses are extremely difficult to manage and control once approvals begin.

The City of Wausau has spent millions of tax payer dollars to bury overhead utilities and clean up the skyline, improve areas with lighting and trees, and overall improve the landscape of the city. Mobilitie is now requesting to install obstructions once again where the City has spent millions removing the obstructions. Many of the obstructions were removed for better visual aesthetics which makes areas more attractive for private developers in urban areas. Putting large obstructions back in the rights-of-way again become a visual hindrance to marketing property for development. The municipality needs to be able to retain full authority to regulate and have final decision authority where these towers should be placed.

Mobilitie has provided minimal information to the City of Wausau on the full scope of their proposed project. We were initially told there would be 14 site applications. After many questions and more communication Mobilitie stated they would probably request "an additional 40 sites". Then when asked again about how many sites they plan on needing in Wausau they stated they were unsure and would not know until after their network was up and running, they would request additional sites as needed. This seems like a very questionable plan, the City of Wausau is concerned about how our future development will be affected by Mobilitie if our authority to regulate our Rights-of-Way is reduced through additional regulation. The City of Wausau would request Mobilitie or other companies

requesting ROW provide a long range strategic plan based on radio path analysis so municipalities with urban areas may be able to determine how dense these small cell sites may become. This would be significant information to know prior to approving any use of City Rights-of-Way.

The City of Wausau would request that Mobilitie provide written documentation that their proposed infrastructure will not be used by an exclusive mobile carrier. They should also include language that they will not discriminate against leasing to other than a single mobile carrier.

Below are comments offered by the City of Wausau related to the sections and questions written in the above referenced document.

II. Discussion

A. Determining How Local Land-Use Regulations or Actions Affect Wireless Infrastructure Deployment

B. Potential Issues to Address in Declaratory Ruling

1. Local Governments' Practices that "Prohibit or Have the Effect of Prohibiting" Provision of Service

Q: Should the Commission, as the expert agency, attempt to reconcile or otherwise resolve these or other differences of interpretation among the courts, and if so, how?

R: City of Wausau believes the private entity requesting access to City Rights-of-Way should be fully responsible to show there are no other feasible sites. This proof should be shown through engineering analysis, radio path studies, and other factual data and presented to the municipality for review. Cost/expense of other site locations shall not be the only reason a private entity may use to determine there are no other feasible sites.

The City of Wausau also believes upgrades to existing sites would be approved through established agreements or ordinances with the municipality. The City of Wausau is proposing to use a License Agreement to process siting applications and this agreement will also address how upgrades will be approved. A local government should also be able to regulate placement of these poles based on visual appeal and aesthetics. The City of Wausau has spent millions of dollars burying overhead utilities to improve aesthetics to encourage private development and increase our tax base. Installing the large obstructions in areas that would be visually obtrusive should definitely be a significant criterion for the City to determine placement. Because this is work that will be done within the Rights-of-Way the municipality should have the authority to regulate and approve.

2. Reasonable Period of Time for Review of Siting Applications

Q: Should approval time frames vary depending on whether a state or local government receives siting requests proposing one small cell deployment at a time or consolidated applications that request authority for a single provider to deploy multiple small cells (i.e., a "batch" of small cell siting proposals).

R: The City of Wausau recommends the time to review applications be no less than 120-days. Most municipalities need time to review applications with staff and then bring to committee for final approvals. Typically committees meet only once a month so it would be unreasonable to reduce these timelines.

3. Application Processing Fees and Charges for Use of Rights-of-Way

Q: How do local governments determine the up-front fees for applications and permits or the recurring fees for usage of Rights-of-Way?

R: Compensation for the use of a municipalities ROW should be left up to the municipality to determine. The Public Service Commission (PSC) states local governments may receive "fair and reasonable compensation" for use of their Rights-of-Way; this fair and reasonable compensation should be left up to the municipality. Mobilitie or any other entity requesting use of Public Rights-of-Way should be expected to work closely with each municipality to discuss and, if necessary, negotiate an amount of compensation. The City of Wausau would treat each site independently and each site may have very different aspects. Some locations may have higher and better uses than a macro tower but if we are required to use this location then it may require a higher cost to place a pole at this location. Depending on where the poles are placed may require very different maintenance, may present different safety risks, may prevent highest and best use of the area, and may inhibit development due to visual obstructions.

Typically use of Rights-of-Way is used for direct services such as electric, telephone, television/internet, water and sewer. The Rights-of-Way are used for the main transmission lines, typically buried, and then services directly connected to residential and non-residential buildings for direct use. These utilities are regulated on the amount of profit they are able to generate. Mobilitie and other similar companies will not be regulated in the same way and they do not provide a direct service to residents. The infrastructure that is proposed will be leased/rented by mobile phone companies and the use of these poles would be for back haul. Mobilitie will lease/rent these facilities for unregulated profit. A municipality should be able to retain full control of the Rights-of-Way, charge a "for profit" company what it feels is appropriate. The PSC should not try to limit or specify what/how a municipality would charge. Each site may be

significantly different as previously discussed and no additional regulation or interpretation by the PSC is required. Mobilitie is requesting additional regulation to minimize/restrict municipalities from being properly compensated for the use of their Rights-of-Way.

Q: Public Comment on Mobilitie's request that the Commission address the provision in Section 253(c) that compensation for the use of Rights-of-Way be "publicly disclosed by such government"?

It would not be necessary for the PSC to take time to rule on this question. It is the City of Wausau's interpretation this information may be obtained through an Open Records request. It appears Mobilitie is trying to have additional regulations in place to reduce their effort and specifically put additional burden on the municipality to gather and prepare additional information. There are already laws in place to request this information; there would be no benefit for additional regulation.